

## REMARKS

### Summary of Office Action

This is in response to the Office Action dated March 22, 2004. In that Office Action, Claims 24-31 have been allowed.

Further, the Examiner indicated that the Information Disclosure Statement submitted on 2 JAN, 2004 has been considered. Further, the disclosure of the above-identified application was objected to based on a contention that the status of each of the parent applications specifically referred to on page 1 should be updated to their current status. As understood, the Examiner indicated that since the title of the invention is not descriptive, a new title is required that is clearly indicative of the invention to which the claims are directed.

Claims 32-43 were rejected under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over Claims 1, 2, 4-8, 11 and 12 of U.S. Patent No. 6,439,757 to Lloyd. Further, Claims 32-43 were rejected under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over Claims 1-2, 5-6 and 8 of U.S. Patent No. 6,652,134 to Lloyd. Claims 32-33 and 41-43 were rejected under 35 U.S.C. § 102(b) as being anticipated by Casebier (U.S. Patent No. 4,143,795). Claims 32-36 and 42-43 were rejected under 35 U.S.C. § 102(b) as being anticipated by Marquardt (U.S. Patent No. 5,050,775).

Moreover, Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Casebier in view of Brown et al. (U.S. Patent No. 5,186,359) based on a contention that it would have been obvious to one of ordinary skill in the art to have formed the housing of Casebier from cardboard as suggested by Brown et al. Claim 41 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Marquardt in view of Brown et al. based on a contention that it would have been obvious to one of ordinary skill in the art to have formed the containers of Marquardt from the plastic material as disclosed by Brown et al. to lower the cost of the containers or to render the containers easily disposable after the contents have been depleted. Claims 37-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Marquardt in view of Wright (U.S. Patent No. 5,085,346) based on a contention that it would have been obvious to one of ordinary skill in the art to have provided the compartment in the second portion of Marquardt with a container which holds a second liquid component

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as disclosed by Wright for the purpose of permitting the chamber in the first portion of the housing to receive contents of the container in the second portion or the housing or, conversely, the container to receive the contents of the chamber. Claim 40 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Marquardt in view of Wright as applied to Claim 38 above and further in view of Mullen et al. (U.S. Patent No. 5,673,817) based on a contention that it would have been obvious to one of ordinary skill in the art to have substituted the second liquid component in Marquardt in view of Wright as disclosed by Mullen et al. for the purpose of forming a beverage with alcohol therein.

## I. Applicant's Response

### A. Specification

In the Office Action, as understood, the disclosure of the above-identified patent application was objected to based on a contention that the status of each of the parent applications specifically referred to on page 1 of the specification should be updated to their current status. In response, as indicated in the **Amendments to the Specification** section above, Applicant has amended page 1 by updating the current status of the parent applications. In particular, the **Cross-Reference to Related Applications** section of the specification now indicates that the '524 application is now Patent No. 6,652,134, '623 application is now Patent No. 6,439,757 and '617 application is now abandoned. In this regard, Applicant respectfully submits that the objection directed to the disclosure has been overcome. Further, as understood, the Examiner indicated that the title of the invention is not descriptive and that a new title is required that is clearly indicative of the invention to which the claims are directed. In response, Applicant has incorporated the title suggested by the Examiner by requesting that the title of the invention be changed to PORTABLE BEVERAGE DELIVER AND MIXING SYSTEM. In this regard, Applicant respectfully submits that the objection to the title of the invention has been overcome. Moreover, Applicant, by this Amendment to the title of the invention, does not in any respect mean to limit the scope of the claims. For example, Applicant does not in any respect mean to limit the scope of the claims to mixing systems.

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B. Double Patenting

In the Office Action, as understood, Claims 32-43 were rejected under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over the enumerated claims listed above in the '757 patent and the '134 patent to Lloyd. In response, the Applicant concurrently submits herewith two (2) Terminal Disclaimers directed to the '757 patent and the '134 patent which are in compliance with 37 C.F.R. § 1.321(c) to overcome the rejection based on non-statutory double patenting grounds. Accordingly, Applicant respectfully submits that the rejection based on non-statutory double patenting grounds have been overcome.

C. Claim Rejection

In the Office Action, as understood, the Examiner rejected Claims 32-43 under 35 U.S.C. §§ 102(b) and 103(a). In response, Applicant respectfully requests that Claims 32-43 be cancelled without prejudice.

i. New Claims 44-47

Applicant respectfully requests that the Examiner add these new Claims 44-47 into the prosecution of the above-identified patent application. These new Claims 44-47 relate to Claims 24-31. In particular, Claim 24 is directed to an end user such that an end user may directly infringe Claim 24, whereas Claims 44-47 are directed to a manufacturer of a portable beverage delivery system such that a manufacturer would infringe such claims as the portable beverage delivery system is fabricated. The basis for Claims 44-47 is found within the specification, namely Figure 2.

Applicant respectfully submits that new Claim 44 is novel and non-obvious in view of the prior art cited in the Office Action. For example, new Claim 44 recites in step (c) the step of inserting a chamber having an introduction aperture and an exit aperture (i.e., two apertures) into a first portion of a housing and recites in step (d) the step of inserting a container having a single aperture into a second portion of the housing. In this regard, Casebier does not disclose such step. In support thereof, Applicant respectfully refers the Examiner to Figure 1 as well as Column 1, Lines 50-53 of Casebier. In Figure 1, all of the chambers and containers have two apertures. Accordingly, Applicant respectfully submits

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that Casebier does not anticipate the method recited in Claim 44. Moreover, Applicant respectfully submits that there is no motivation to modify the invention disclosed in Casebier such that at least one of the containers shown in Figure 1 has a single aperture. The reason is that the invention of Casebier is directed to “an improved beverage dispenser to be stored in domestic refrigerators for cooling and delivery of beverages.”<sup>1</sup> In this regard, if one of the containers shown in Figure 1 were to be modified so as to have only one aperture, the effectiveness of the invention disclosed in Casebier would at the least be made less effective based on a view that to dispense the beverage contained in the single aperture container, such dispensing may be accomplished only by removing the single aperture container from the housing to dispense the beverage contained within the container. Further, as understood, the disclosure of Casebier contemplates dispensing beverage contained in the container while the container remains within the housing. In this regard, as understood, if the container shown in Figure 1 were to have only one aperture for filling and dispensing the container, then the container must be removed for either the dispensing of the beverage from the container or filling the container with the beverage. In this regard, modifying the invention disclosed in Casebier such that the container has only a single aperture would render the invention disclosed therein inoperable for its intended use, as understood. And, in this regard, Applicant respectfully submits that based on the foregoing, Claim 44 is novel and non-obvious with respect to Casebier.

Additionally, Applicant respectfully submits that Claim 44 is novel and non-obvious with respect to Marquardt. In particular, Claim 44 recites the step of inserting a chamber into a first portion of a housing and inserting a container into a second portion of the housing. In this regard, Marquardt does not disclose the steps of inserting a chamber and container into first and second portions of a housing, rather at most, Marquardt discloses inserting either a chamber or a container (but not both) into a portion of a housing. Moreover, there is no motivation to modify the teachings of Marquardt to add the additional step of inserting a container into a second portion of the housing. In support thereof, Applicant respectfully directs the Examiner’s attention to Figure 7. In Figure 7, a chamber is inserted into a first portion of the housing. As shown, as understood, only two portions of the housing remain where a container maybe inserted therein, namely the upper portion and lower portion. In

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<sup>1</sup> Column 1, Lines 50-53.

in this regard, there is no motivation to insert a container into the lower portion of the housing shown in Figure 7 of Marquardt based on a view that the lower portion has an open bottom and the container would merely drop out of the open bottom during transportation of the housing with the container inserted therein. With respect to the upper portion, there is no motivation to insert a container therein based on a view that the container would not be able to lie flat within such upper portion because of the threaded cap 28. In this regard, any type of printed indicia such as marketing or advertising on the container would be marred or mutilated during transportation of the housing which would be unacceptable, as understood. Accordingly, Applicant respectfully submits that Claim 44 is novel and non-obvious with respect to Marquardt. And for the foregoing reasons, Claim 44 is believed to be in condition for allowance.

The dependent claims of Claim 44 contain additional patentable subject matter such that such claims are also in condition for allowance. For example, Claim 47 recites the step of forming a frangible wall (i.e., ruptureable) between the chamber and container. In this regard, as understood, the references cited within the Office Action do not disclose a frangible wall between the chamber and container. Rather, the cited references appear to disclose separate walls for each chamber and container (i.e., two walls) that are independent of each other. In other words, rupturing the wall of the chamber does not operate to mix a mixer beverage received into the chamber with an alcoholic beverage received into the container, and vice-versa.

Moreover, Applicant respectfully submits that there is no motivation, as understood, to modify the teachings of the cited references to incorporate the step of forming a frangible wall between the chamber and container. For example, with respect to Casebier, as understood, the teachings of Casebier are directed to dispensing different types of beverages such as milk and water.<sup>2</sup> In this regard, there is no motivation to form a frangible wall between the chamber and container based on a view that there is no motivation to mix milk with water. The teachings of Casebier do disclose different types of beverages such as water and fruit juices which may be separately contained within the chamber and container. These beverages, water and fruit juices, may be mixed, however the invention disclosed in Casebier, as understood, may be made inoperable for its intended use if a frangible wall is

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<sup>2</sup> Column 1, Line 15.

formed between the chamber and container. As understood, the teachings of Casebier is directed to filling each container with different types of beverages so as to make efficient space use of a refrigerator. During use, a user may dispense a beverage from the container through a spigot and when the beverage is completely dispensed from the container, the container may be refilled with the same or different beverage. In this regard, if a frangible wall were to be formed between the chamber and container, then the chamber and container could not be utilized to receive and keep separate two different types of beverages. Hence, Applicant respectfully submits that there is no motivation to modify the teachings of Casebier so as to include the step of forming a frangible wall between the chamber and the container.

With respect to Marquardt, Applicant respectfully submits that the teachings of Marquardt do not disclose the step of forming a frangible wall between the chamber and container. In support thereof, Applicant directs the Examiner's attention to Figure 7 which discloses only a single chamber without any container. Moreover, there is no motivation to modify the teaching of Marquardt to incorporate the step of forming a frangible wall between the chamber and a hypothetical container wherein the frangible wall is ruptureable upon application of hand pressure on the frangible wall. The reason is that forming such a frangible wall between the chamber disclosed in Marquardt and the hypothetical container would render the invention disclosed in Marquardt inoperable for its intended purpose, as understood. In particular, as understood, the invention disclosed in Marquardt is directed to a housing with a support 36 which telescopes within the housing as the beverage within the chamber is being dispensed. As such, if a frangible wall ruptureable upon application of hand pressure is formed between the chamber and proposed container, then the support 36 may not telescope within the housing based on a view that the frangible wall if not ruptured would hold the support 36 up in its initial position. In the alternative, if the support 36 were to be telescoping downwardly despite the formation of the frangible wall, as understood, then the frangible wall may rupture upon dispensing of the beverage contained within the chamber and not only upon application of hand pressure thereon. In this regard, Applicant respectfully submits that Claim 47 as well as the balance of the claims which depend upon independent Claim 44 are in condition for allowance.

ii. New Claims 48-50

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By this Amendment, Applicant respectfully request that new Claims 48-50 be entered into the prosecution of the above-identified patent application. These claims are also directed to the frangible wall. The basis for these new claims is found within the specification, namely, Figures 6 and 7 and its corresponding text within the specification.

Applicant respectfully submits that the references cited within the Office Action do not disclose, suggest or make obvious the invention recited in Claims 48-50 for the same reasons discussed above in relation to new dependent Claim 47. As such, Applicant respectfully submits that Claims 48-50 are in condition for allowance.

### Conclusion

For the foregoing reasons, Applicant respectfully submits that all the stated grounds of rejections and objections have been overcome, and that new Claims 44-50 as well as previously presented Claims 24-31 which have been allowed, are in condition for allowance. An early Notice of Allowance is therefore respectfully requested.

Should the Examiner have any suggestions for expediting allowance of the application, the Examiner is invited to contact the Applicant's representative at the telephone number listed below.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 10/18/04 By: \_\_\_\_\_  
Customer No.: 007663

  
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Kit M. Stetina  
Registration No. 29,445  
STETINA BRUNDA GARRED & BRUCKER  
75 Enterprise, Suite 250  
Aliso Viejo, California 92656  
Telephone: (949) 855-1246  
Fax: (949) 855-6371